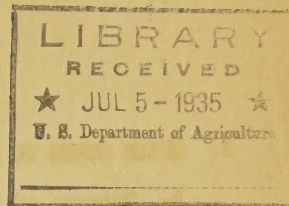


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SUMMARY AND ANALYSIS
OF AMENDMENTS TO
THE AGRICULTURAL ADJUSTMENT ACT

(H.R. 8492)

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I. QUICK GUIDE TO PURPOSE OF THE AMENDMENTS

A. Purpose of revisions in the new bill, H.R. 8492:

- (1) To safeguard certain provisions of the Agricultural Adjustment Act against attacks based upon the Supreme Court's decision in the Schechter case by
 - (a) Rewording Congress's scope of action under the power to regulate interstate commerce.
 - (b) Specifying and limiting certain powers delegated by Congress under the Act, especially in connection with enforcement of marketing agreements.
- (2) To provide for the continuance of processing taxes at a prescribed rate in case the flexible tax provisions contained in the amendments are declared unconstitutional.
- (3) To prohibit suits against the United States Government for the refund of taxes collected prior to the adoption of the amendments.
- (4) To authorize federal cooperation with State authorities in programs relating to agricultural commodities, thus coordinating interstate and intrastate commerce regulations.
- (5) To redefine provisions in the Agricultural Adjustment Act designed to protect consumer interests.

B. Objectives in the original amendments, and now included in the revised bill:

- (6) To authorize upward as well as downward adjustments of production in crop and livestock programs.
- (7) To make possible the Ever-Normal Granary plan for maintaining reserves of certain food, feed, and fiber crops, for protection of producers and consumers.
- (8) To provide a more effective legal framework for cooperative marketing agreements by
 - (a) Making it impossible for a majority of handlers, under certain circumstances, to veto an order favored by two-thirds of the producers concerned,

- (b) Providing for quotas, allotments, and the disposal of surplus in the case of fruits and vegetables,
- (c) Defining the procedure for petitions on the part of handlers, hearings and rulings thereon, and legal review of rulings,
- (d) Authorizing the examination of books and records to check compliance with and the effect of marketing agreements and orders on producers, consumers and processors,
- (e) Providing for the payment by handlers of certain administrative expenses.

C. Other objectives included in the original and the revised bill:

- (9) To authorize appropriation of one-third of customs receipts to be used to encourage domestic consumption or export of the major agricultural commodities and their products.
- (10) To insure that payments out of processing taxes collected on any given commodity shall not be less than the proceeds of taxes collected on that commodity.
- (11) To authorize control of imports of those agricultural commodities covered by production adjustment programs.
- (12) To include Mortgage interest rates and tax rates in calculating parity prices for agricultural commodities.

II. QUICK GUIDE TO THE AMENDMENTS IN NUMERICAL ORDER

- Sec. 1(a) Providing that parity price for commodities whose base period is 1909-1914 shall reflect mortgage interest rates and tax rates per acre on farm real estate.
- (b) Redefining the policy of Congress as to protection of consumer interests.
- Sec. 2(1) Directing the Secretary of Agriculture to investigate facts and to enter into agreements with producers for
- (2) adjustment of acreage or production, and to make rental or benefit payments, including payments in kind, or
- (3) Make payments to remove surpluses, expand domestic or foreign markets, or in connection with production for domestic use.
- (4) Prohibiting use of these powers when the current farm price of a commodity is not less and is not likely to be less than the fair exchange value, or when such powers would not effectuate the declared policy.
- (5) Directing the holding of hearings on investigations.
- (6) Prohibiting payment in kind with any commodity other than that in connection with which payment is being made.
- (7) Directing additional payments for sugar beets and sugarcane under certain conditions.
- (8) Directing that in the case of rice, the right to a benefit payment can be pledged for production credit.
- (9) Permitting loans on stored commodities.
- Sec. 3 Making proceeds of taxes available for acquisition of any agricultural commodity pledged for a loan, or for any payments authorized under Sec. 8 of the Act.
- Sec. 4 Redefining the interstate commerce clause with respect to marketing agreements.
- Sec. 5(1) Directing the issuance of orders to handlers regulating the handling of commodities in interstate commerce.
- (2) Listing the commodities to which orders shall be applicable - milk, fruits (including pecans and walnuts but not apples or fruits for canning), tobacco, vegetables (not including vegetables for canning), and naval stores.

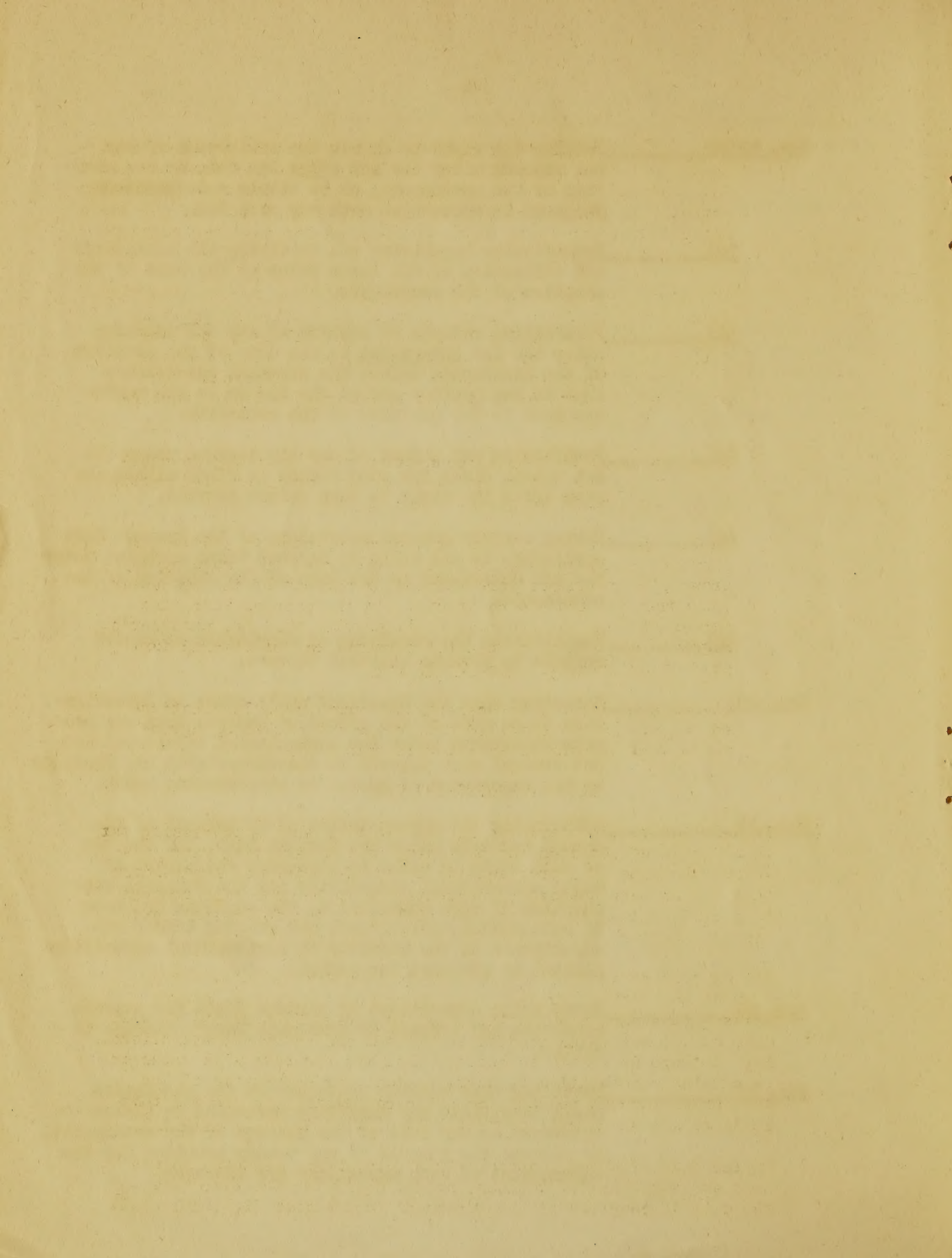
- (3) Directing that due notice of and opportunity for a hearing be given upon a proposed order or amendment thereto.
- (4) Directing issuance of an order on the basis of evidence in the hearing, upon a finding that it will tend to effectuate the policy of the Agricultural Adjustment Act.
- (5) Directing that orders for milk and its products shall contain certain conditions and no others. Details set forth under 6 subheadings.
- (6) Same for other commodities subject to order provisions. Details set forth under 6 subheadings.
- (7) Same for both milk and the other commodities subject to order. Details set forth under 3 subheadings.
- (8) Providing that no order shall become effective until handlers of 50 percent of the volume of the commodity have signed a marketing agreement, except
- (9)(A) That with the approval of the President, an order shall become effective even if handlers of more than 50 percent of the volume refuse or fail to sign the marketing agreement -
 - (1) If this refusal or failure would tend to prevent the effectuation of the policy of the Act -
 - (2) If the order is the only practicable means of advancing the interests of producers, and if two-thirds of them, by number or volume, favor it.
- (10) Providing that no order shall be issued unless it is applicable only to persons in the industrial or commercial activity directly affected by a corresponding marketing agreement which regulates the handling of the commodity in the same manner.
- (11)(A) Prohibiting blanket orders for all regions unless they are necessary.
 - (B) Directing that, except in the case of milk and its products, orders shall apply to areas as small as possible.
 - (C) Directing that, as far as practicable, different terms be included in orders for different areas to correspond to local production and marketing methods.

- (12) _____ Allowing the approval or disapproval of orders by a cooperative association to be treated as ~~approval~~ approval or disapproval by its members and stockholders.
- (13)(A) _____ Directing that orders shall not apply to retailers, except in the case of milk and its products, unless 50 percent by volume of the handlers subject to it have signed the corresponding marketing agreement.
- (B) _____ Directing that orders shall not apply to producers in their capacity as producers.
- (14) _____ Providing fines for handlers who violate orders.
- (15) _____ Defining procedure by which handlers may petition for modification of or exemption from an order, with opportunity for a hearing and a ruling by the Secretary of Agriculture, and recourse to the courts for review of such ruling.
- (16) _____ Directing the termination or suspension of an order under certain conditions, and termination of a marketing agreement or order on the demand of a majority by volume and number of the producers.
- (17) _____ Making all provisions applicable to orders equally applicable to amendments to orders.
- Sec. 6 _____ Authorizing examination of books and records for certain purposes, with the provision that information so obtained shall be kept confidential; and defining a base period for ascertaining the purchasing power of a commodity specified in a marketing agreement or order.
- Sec. 7, 8, 9 _____ Changing numbering of, and making technical corrections in the language of, certain sections of the Act.
- Sec. 10 _____ Granting power to investigate violations of orders by handlers, and to hold hearings in order to determine whether or not to refer an alleged violation to the Attorney-General.
- Sec. 11 _____ Providing that a processing tax shall be in effect following proclamation by the Secretary that any payments under Section 8 of the Act are to be made.
- Sec. 12(1) _____ Prescribing that the rate for a processing tax shall be the difference between the current average farm price and the fair exchange value, with certain additions to allow for exemptions, refunds, et cetera; and providing for changes in the rate under certain circumstances.

- (2) ~~Setting the rate of the processing tax for certain designated commodities until December 31, 1937 at the rate in effect June 1, 1935.~~
- (3) ~~Setting the rate for rice at 1¢ per pound of rough rice until July 31, 1936.~~
- (4) ~~Providing flexibility in the tax rate for these commodities, with provisions for continuing the current rate in case of an adverse decision as to constitutionality of the provision authorizing flexibility.~~
- (5) ~~Defining the weight of rice on which the tax shall be computed.~~
- (6) ~~Defining procedure for computing the rate of tax on sugar beets and sugarcane.~~
- (7) ~~Providing that premiums for protein content shall not be included in figuring the current farm price of wheat.~~
- ~~Sec. 13~~ ~~Providing that parity price for certain commodities shall reflect mortgage interest rates and tax rates per acre on farm real estate.~~
- ~~Sec. 14~~ ~~Striking out the special definition covering the processing of peanuts contained in paragraph (5) of Section 9(d) of the Agricultural Adjustment Act, in order that the general definition of processing in paragraph (7) of Section 9(d) shall apply in the case of peanuts.~~
- ~~Sec. 15(1)~~ ~~Authorizing the establishing of State and local committees, and providing for encouragement of producer cooperatives.~~
 - (2) ~~Providing for the payment of administrative expenses by handlers, in connection with the administration of orders, on a prorata basis, and for suits against handlers for the collection of these expenses.~~
- ~~Sec. 16~~ ~~Providing for a technical change in language in Section 10(e) of the Agricultural Adjustment Act.~~
- ~~Sec. 17~~ ~~Authorizing cooperation with State authorities in the administration of Federal and State programs in order to effectuate the policy of the Agricultural Adjustment Act.~~
- ~~Sec. 18~~ ~~Providing for a technical change in the language of Section 12(a) of the Agricultural Adjustment Act.~~

- Sec. 19 Providing that payments made under Section 8 of the Act in connection with any basic commodity shall not be less than the proceeds of taxes levied with respect to such commodity.
- Sec. 20(a) Extending provisions with respect to sugar beets and sugarcane until December 31, 1937.
- (b) Providing for refunds of the floor stocks tax in the case of sugar beets and sugarcane.
- Sec. 21 Entitling the importers of products which have been found to be low-value products to a remission of the compensating tax in all cases where the processing tax has been suspended with respect to the domestic product, and making specific provision for certain refunds in the case of large cotton bags.
- Sec. 22 Striking out the requirement in Section 15(c) of the Act that claims for refund of processing taxes after delivery of the product for charitable distribution be filed within six months after such delivery.
- Sec. 23 Making a technical change in the language of Section 15(c) of the Agricultural Adjustment Act.
- Sec. 24 Making a technical change in the language of Section 16(a)(2) of the Agricultural Adjustment Act.
- Sec. 25 Providing for a floor stocks tax refund to retailers of wheat products and cotton products in case of termination of the processing tax.
- Sec. 26 Amending paragraph (1) of Section 16(e) of the Act so as to limit its application to hogs.
- Sec. 27 Providing a credit against the payment of processing taxes in the case of exported articles from a taxed commodity.
- Sec. 28 Limiting the power of the Secretary of the Treasury under Section 19(b) of the Act so as to permit him to postpone payment of not exceeding three-fourths of the amount of tax payable.
- Sec. 29(a) Prohibiting the maintenance of suits for the allowance of refunds or credits, and prohibiting the allowance of any refunds or credits, for taxes accrued, paid, collected, or assessed prior to the date of the adoption of the amendments.

- Sec. 29(b) Denying the right to enjoin the collection of any tax imposed under the Act after the date of the adoption of the amendments, or to obtain a declaratory judgment in connection with any such tax.
- (c) Specifically legalizing and ratifying the assessment and collection of all taxes prior to the date of the adoption of the amendments.
- (d) Prohibiting refunds or credits of any tax accruing under the Act subsequent to the date of the adoption of the amendments unless the claimant establishes that he has neither passed the tax on to his vendee nor back to the producer of the commodity.
- (e) Prohibiting any refund of any tax accrued under the Act unless claim for such refund is filed within one year after the right to such refund accrued.
- (f) Making certain general provisions of the Revenue Laws applicable to all suits to recover taxes accruing under the Act subsequent to the date of the adoption of the amendments.
- (g) Facilitating the obtaining of charitable or export refunds by persons entitled thereto.
- Sec. 30 Directing that the President shall cause an investigation to be made of the effect of imports upon any program undertaken under the Agricultural Adjustment Act, and control such imports in accordance with his findings by the imposition of quotas or compensating taxes.
- Sec. 31 Authorizing the appropriation of 30 percent of the annual receipts under the Customs Laws, and the use of such funds in order to encourage the export of major agricultural commodities and the domestic consumption of such commodities, the purchase or lease of submarginal agricultural and grazing lands, and adjustments in the quantity of agricultural commodities planted or produced for market.
- Sec. 32 Authorizing expenditure of certain funds for experimentation and efforts to eradicate Bang's disease in cattle.
- Sec. 33 Providing that nothing contained in the amendments shall invalidate any marketing agreement or license in existence on the date of the passage of the amendments, or prevent the pursuit of any remedy provided for the enforcement of such agreements and licenses.



Also subject to these conditions, the Government shall make payments to remove quantities of any basic commodity from the normal channels of trade or commerce; to expand domestic or foreign markets; in connection with production of that part of any basic agricultural commodity which is required for domestic consumption. Sec. 2 (3)

The above powers shall not be exercised when, on investigation, it is found that the current average farm price is not less than the fair exchange value, and is not likely to be less during the current or succeeding year; or if the continued exercise of these powers would not tend to effectuate the policy of the Act, or would not be administratively practicable. Sec. 2 (4)

Hearings shall be held in connection with the above investigations, and due notice and opportunity for interested parties to be heard shall be given. Sec. 2 (5)

In the case of sugar beets or sugarcane, certain additional payments shall be made if it is established that returns to growers or producers were reduced by payment of the processing tax under the 1933-34 contracts. In the case of rice, the agreement with the producer shall provide that the producer's right to any rental or benefit payments can be pledged for production credit. Sec. 2 (7) (8)

Closer definition of processing tax provisions is considered below, and new detailed provisions for marketing agreements will be considered later in this analysis.

RATE OF PROCESSING TAX

- (2) In addition to the provision in the old bill that a processing tax shall be in effect from the beginning of the marketing year following the date of a proclamation by the Secretary of Agriculture that one or more authorized payments are to be made with respect to a basic commodity the revised bill makes the following provisions regarding processing taxes: Sec. 11 (a)

The processing tax shall be at a rate to equal the difference between the current average farm price and the fair exchange value - plus such a percentage (not to exceed 20 percent) as will make up for estimated credits or refunds and estimated exemptions. But if there is reason to believe that the tax rate will cause or is causing accumulation of surplus stocks or depression of the farm price through reducing domestic consumption, a new tax rate shall be set which will prevent this difficulty. Sec. 12 (1)

In the case of wheat, cotton, field corn, hogs, peanuts, sugarcane and sugar beets, tobacco, paper, and jute, the tax, from the date of adoption of the amendment to December 31, 1937, shall

be at the rate in effect on June 1, 1935. In the case of rice, the tax, from April 1, 1935, to July 31, 1936, shall be at the rate of 1 cent per pound of rough rice. Sec. 12 (2) (3)

IN CASE OF ADVERSE COURT DECISION

The rate of tax on the products listed in the above paragraph may be reduced (even to zero) to prevent an accumulation of surplus stocks or depression of the farm price, or may be increased; and at the end of the period defined above, the Secretary of Agriculture shall determine a rate of tax. But if the provisions of this paragraph are finally declared unconstitutional, or any action thereunder invalid, the rates of tax in the above paragraph shall be in effect until altered by Act of Congress. Sec. 12 (4)

In the case of rice, the tax shall be figured on the weight of rough rice; and rules are prescribed for figuring the tax rate on sugar. In the case of wheat, premiums for protein content shall not be taken into account in figuring the current farm price. Sec. 12 (5) (6) (7)

SUITS FOR RECOVERY OF TAXES PROHIBITED

- (3) Processing taxes levied to finance adjustment programs are reflected in the retail prices of the taxed commodities. Since there would be no possibility, in event the tax were held invalid, of returning the taxes back to consumers and producers from whom processors have already collected them, it would be obviously unfair to let processors recover tax funds. The revised bill, in accordance with the established principle that the United States Government can be sued only by its own consent, provides:

That there shall be no suit or judgment in any court for the refund or credit of any tax assessed, paid, collected, or accrued prior to the date of the adoption of the amendment. Sec. 29 (a)

OTHER TAX PROVISIONS

Other amendments dealing with taxes are the following:

No suit or action shall be brought in any court to prevent or restrain the assessment or collection of any tax imposed after the adoption of the amendments, or to obtain a declaratory judgment in connection therewith. Sec. 29 (b)

The assessment and collection of taxes imposed prior to the adoption of the amendments is specifically legalized and ratified. Sec. 29 (c)

Refund or credit of any tax accruing after the adoption of the amendments is prohibited, unless the claimant establishes

that he has not passed the tax on to the buyer or seller, or that he has repaid the amount to the buyer or the producer. Sec. 29 (d)

No refund or credit for any tax shall be allowed unless the claim has been filed within a year after the right to such a refund or claim has accrued. Sec. 29 (e)

Certain general provisions of the revenue laws are made applicable to all suits to recover taxes accruing under the Act subsequent to the adoption of the amendments, and the obtaining of charitable or export refunds is facilitated. Sec. 29 (f) (g)

Provision is made for a remission of the compensating tax to importers of low-value products in cases where the processing tax on the domestic product has been suspended; and for certain refunds in the case of large cotton bags. Sec. 21

The provision in Sec. 15 (c) of the Act (that claim for refund of processing taxes on products for charitable distribution must be made within six months after delivery) is stricken out. Sec. 22

Provision is made for a floor stocks tax refund to retailers of wheat products and cotton products in case of termination of the processing tax (Sec. 25) and for a refund of the processing tax paid on a commodity subsequently exported (Sec. 27). Provision for credit or refund under Sec. 16 (e) (1) of the Act is limited to hogs. (Sec. 26)

The power of the Secretary of the Treasury to postpone payment of processing taxes is limited to three-fourths of amount of the tax payable. Sec. 28

COOPERATION WITH STATES

- (4) Previous decisions in the lower courts adverse to a broad interpretation of interstate commerce, and the interpretation by the Supreme Court in the Schechter case, emphasize the desirability of State laws to supplement Federal laws in support of the marketing agreement program for some commodities. Therefore the amendments provide authority for holding joint hearing with the duly constituted authorities of any State, Federal cooperation with them, and acceptance and utilization of the services of State and local officers and employees, exchange of records and facilities with them, and issuance of orders that will complement State orders or other regulations. But there are limitations on the information that the Secretary may give to State authorities, and they must sign a written agreement to keep such information confidential. Sec. 17

PROTECTION OF CONSUMERS

- (5) In order to define more precisely what shall be done to protect consumer interests, the amendments declare: That the policy of Congress is to correct the current price level gradually, and to authorize no action which tends to maintain prices to farmers above the fair exchange value defined in the Agricultural Adjustment Act. Sec. 1 (b)

B. Objective in the old bill included in the revised bill:

All of the objectives of the amendments as originally proposed are included in the revised bill, with such changes as are deemed advisable to conform to the principles established in the Schechter case decision. Amendments designed to attain the chief objectives include the following:

AUTHORIZING UPWARD ADJUSTMENT

- (6) The Agricultural Adjustment Act provides that rental and benefit payments might be made for reduction of crops and livestock. It is assumed that what was meant was a reduction under production at the time the Act was passed. Actually there may be need for an increase from one year to the next. In order to permit this flexibility from year to year, the amendments provide that rental or benefit payments are to be made for adjustment in acreage or production for market. Sec. 2 (2)

THE EVER-NORMAL GRANARY

- (7) The Ever-Normal Granary plan is intended to accomplish two main objects: (1) to insure reserve supplies of such food, feed, and fiber crops as can be readily stored, in order to minimize the effect of shortages such as those caused by drought; (2) to keep the supply of these products more even from year to year, thereby minimizing violent price changes, which in the long run are against the interests of both producers and consumers.

The amendments contain several provisions to put this Ever-Normal Granary plan into effect.

First, it is provided that "a reasonable percentage of any benefit payment may be advanced" on any non-perishable commodity stored on the farm under lock and seal in accordance with Government regulations. Sec. 2 (9)

Second, the proceeds of taxes imposed under the Agricultural Adjustment Act may be appropriated to acquire "any agricultural commodity pledged as security for any loan made by any Federal agency," provided the loan was made on condition

that the borrower "agreed to cooperate with a program of production adjustment or marketing adjustment." Sec. 3 (1)

Third, a benefit payment may be made in kind instead of in cash - that is, in quantities of one or more basic agricultural commodities acquired pursuant to the Agricultural Adjustment Act. Sec. 2 (2) (b)

Fourth - but no payment in kind may be made except with the commodity for which the rental or benefit payment is being made. (For example, wheat could not be used to make payments in connection with a corn-hog program.) Sec. 2 (6)

STRENGTHENING MARKETING AGREEMENTS

- (8) Some 2 to 2-1/2 million American farmers produce crops or products (chiefly milk, vegetables, fruits, and nuts) not readily subject to production adjustment on a widespread and uniform scale, as in the case of corn, wheat, and cotton, for example. These farmers live in scattered areas, and local conditions of price and supply frequently have a great deal to do with their returns.

The most effective method for this third of all American farmers to have the benefit of an agricultural program aided by the Federal Government has been through marketing agreements. By this method, farmers producing a certain product for a certain market act together instead of as individuals, and sell their product under uniform terms and conditions set forth in the marketing agreement, which is administered by an impartial agency.

This is essentially the traditional method of producer-cooperatives, but it is given effective legal support and the active participation of the Government.

The handlers who buy from the farmers are of course parties to the agreement and must abide by its terms and conditions.

A large section of the amendments is concerned with strengthening and clarifying the legal status of this marketing agreement method, in accordance with experience gained under two years of the Agricultural Adjustment Act. In the revised bill, this section has been written in much greater detail than originally, chiefly in order that the powers granted to the Secretary of Agriculture may be made specific rather than broad and discretionary.

The commodities and their products that may be handled under the marketing agreement method are now specified as milk, fruits (including pecans and walnuts but not including apples

or fruits for canning), tobacco, vegetables (including soy beans but not including vegetables for canning), and naval stores. The products of these commodities are also included, except the products of naval stores. Sec. 5 under the heading Sec. 8c (2)

"ORDERS" REPLACE "LICENSES"

In past practice, and under the amendments as drafted in the old bill, handlers were licensed by the Government to do business - and the license contained the same terms as the corresponding marketing agreement. In the amendments as originally proposed in the old bill, the power to revoke a license - that is, to prevent a handler from doing business - was eliminated. It was then recognized that without this power to revoke, licensing a handler to do business is in itself an anomaly.

In the revised bill, therefore, the licensing method is eliminated. Instead, the Secretary of Agriculture is directed to issue orders, and amendments to orders. The term "order" is in general usage with respect to administrative ~~regulations~~, such as those of the Interstate Commerce Commission; and it also lends itself to detailed specification by Congress of just what the orders shall be and shall not be.

These orders are "applicable to processors, associations of producers, and others, engaged in the handling" of any of the specified agricultural commodities (such persons are called "handlers"), and they regulate the handling of the commodity or product "in the current of interstate or foreign commerce," et cetera - the language here being identical with that elsewhere in the amendments. Sec. 5 under the heading Sec. 8c (1)

Such an order or amendment shall be issued whenever the Secretary has reason to believe it will tend to effectuate the declared policy of the Agricultural Adjustment Act - but first there shall be due notice of and an opportunity for a hearing, on the evidence of which (with other findings) the issuance of the order shall be based. Sec. 5 under the heading Sec. 8 c (3) (4)

It is directed that such orders "shall contain one or more of the following conditions, and no others".

Thereafter, specific terms and conditions are set forth for milk and its products, and for the other products subject to order provisions.

These terms and conditions are based on past experience and practice, largely incorporated in existing marketing agreements and licenses.

TERMS AND CONDITIONS FOR MILK

In the case of milk and its products terms and conditions are set forth for

Classifying milk according to use, and fixing or providing a method for fixing minimum prices for each classification, to be paid by all handlers, as well as fixing the time when payments shall be made. Such prices shall be subject to certain technical adjustments. Sec. 5 under the heading Sec. 8c (5) (A)

Providing that all producers delivering milk to the same handler shall be paid uniform prices, when such a provision is favored by at least three-fourths of the producers, by number or volume; or that, subject to certain technical adjustments, all producers delivering milk to all handlers shall be paid uniform prices irrespective of the use that may be made of the milk by any individual handler. Sec. 5 under the heading Sec. 8c (5) (B)

Providing for adjustments in payments among handlers; for payments to new producers for milk used for manufacturing purposes; and for verification of weights, sampling, testing, and security for payments. Sec. 5 under the heading Sec. 8c (5) (C) (D) (E)

Providing that properly qualified cooperative marketing associations may blend the proceeds of all sales and distribute these proceeds in accordance with contract. (This is in accordance with established practice.) Sec. 5 under the heading Sec. 8c (F)

TERMS & CONDITIONS FOR FRUITS & VEGETABLES

In the case of fruits (including pecans and walnuts, but not apples or fruits for canning) and their products; tobacco and its products; vegetables (not including vegetables for canning) and their products; and naval stores - terms and conditions are set forth for

Limiting, or providing methods for limiting, the total quantity of any commodity or product that may be marketed or transported to market by handlers; allotting amounts that handlers may purchase, so that these amounts will be equitably apportioned among the producers, based on their past production or sales; and allotting the amounts that handlers may market or transport, so that these amounts will be equitably apportioned among the handlers. Sec. 5 under the heading Sec. 8c (6) (A) (B) (C)

Determining, or providing methods for determining, the existence and extent of a surplus, and for its control and disposition, and for equalizing the burden of such control or elimination among producers and handlers; and establishing reserve pools, with an equitable distribution of the returns therefrom. Sec. 5 under the heading Sec. 8c (6) (D) (E)

Fixing, or providing methods for fixing, minimum prices at which first handlers shall purchase any commodity or product (with certain limitations). Sec. 5 under the heading Sec. 8c (5) (F)

PROVIDING FOR ADMINISTRATIVE AGENCIES

In the case of all these (milk and the other commodities subject to order provisions), further terms and conditions are set forth for

Prohibiting unfair competition and unfair trade practices; providing for the selection of agencies with power to administer the Secretary's orders, make rules and regulations, investigate complaints of violations, and recommend amendments; and allowing for other incidental and necessary terms and conditions. Sec. 5 under the heading Sec. 8c (7) (A) (B) (C)

Thus marketing agreements and the orders connected therewith are covered in detail in the new form of the amendments. The orders outlined above apply when handlers of not less than 50 percent of the volume of the commodity or product have signed a marketing agreement. (Sec. 5 under the heading Sec. 8c (8).) In addition, the other provisions originally included in the amendments to strengthen the marketing agreement method are included here also.

COUNTERACTING VETO POWER OF HANDLERS

- (a) It is not unusual for a few handlers in a given market to handle most of the product of perhaps several thousand producers (in the case of milk, for example.) Occasionally handlers of more than 50 percent of the volume will refuse or fail to sign a marketing agreement. When this happens, the small group of handlers has an absolute veto power over the marketing plans of the large group of producers. To counteract this absolute veto power, it is provided that an order shall become effective even when handlers of more than 50 percent of the volume refuse or fail to sign the marketing agreement, if -

The President of the United States approves.

The refusal or failure to sign tends to prevent the effectuation of the policy of the Agricultural Adjustment Act.

The issuance of the order is the only practical means of advancing the interests of the producers.

The issuance of the order is approved or favored by at least two-thirds of the producers by number or volume.

The order is made applicable only to persons in the respective classes of industrial or commercial activity specified in the marketing agreement. Sec 5 under the heading Sec. 8 c (9) (A) and (10)

Approval or disapproval by a cooperative association of the issuance or termination of an order may be considered as the approval or disapproval of its members or stockholders. Sec. 5 under the heading Sec. 8 c (12)

All provisions applicable to orders are also applicable to amendments to orders. Sec. 5 under the heading Sec. 8 c (17)

LIMITATIONS ON ORDERS

Further limitations on orders issued in connection with marketing agreements include the following:

No blanket order for all marketing areas shall be issued unless orders for the separate areas would fail to effectuate the declared policy of the Agricultural Adjustment Act.

Orders shall be limited to the smallest practicable regional production or marketing areas, except in the case of milk and its products.

Orders shall contain different terms, as far as practicable, to suit different local conditions in production and marketing. Sec. 5 under the heading Sec. 8 c (11) (A) (B) (C)

No order under (9) (A) of Sec. 5 shall be applicable to a retailer in his capacity as a retailer, except in the case of milk and its products.

No order shall be applicable to a producer in his capacity as a producer. Sec. 5 under the heading Sec. 8 c (13) (A) (B)

- (b) Provisions for quotas and allotments are covered in a previous section of this analysis.

FINES, PETITIONS, AND LEGAL RECOURSE

- (c) Since handlers are not to be licensed, violations are not punishable by revoking a license. Instead, the amendments provide that violations shall be punishable, on conviction, by a fine or not less than \$50 or more than \$500 for each violation and each day during which a violation continues. Sec. 5 under the heading Sec. 8 c (14)

Under another section, the Secretary is given power to institute an investigation whenever he, or a designated officer or employee, has reason to believe that the provisions of any order have been or are being violated; and to conduct a hearing to determine the facts in order to refer the matter to the Attorney General. Sec. 10.

It is also provided that --

Handlers may file a petition for modification of or exemption from any provision of an order, on the ground that it is not in accordance with the law.

A hearing shall be granted.

After the hearing, a ruling ~~shall be made~~ which is final if in accordance with the law.

The local District Court of the United States (or the Supreme Court of the District of Columbia) is vested with jurisdiction to review the ruling, and to direct suitable action in accordance with its findings. Sec. 5 under the heading Sec. 8 c (15)

Procedure for termination or suspension of an order or amendment to an order is also provided; and the Secretary is directed to terminate a marketing agreement whenever he finds that this action is favored by a majority of the producers concerned. Sec. 5 under the heading Sec. 8 c (16)

RIGHT TO EXAMINE BOOKS AND RECORDS

- (d) In order to determine the extent to which a marketing agreement or an order is being carried out, and to determine whether there has been any abuse of the privilege of exemption from the anti-trust laws, all handlers subject to an order are directed to furnish such information as the Secretary finds necessary; and for the purpose of checking the correctness of any report, or obtaining required information that has not been furnished, examination of such books and records as the Secretary deems relevant is authorized. But information so obtained shall be kept confidential except in a suit or administrative hearing on the specific marketing agreement or order involved. Sec. 6 under the heading Sec. 8 d (1) (2)

It is also provided, in connection with marketing agreements and orders, that if the purchasing power of any commodity in the base period specified in the Agricultural Adjustment Act cannot be satisfactorily determined, it shall be the post-war period August 1919-July 1929, or a portion thereof. Sec. 6 under the heading Sec. 8 e

ENCOURAGEMENT OF COOPERATIVES

- (e) Establishment of State and local committees or associations of producers is authorized with Federal recognition and encouragement of producers cooperatives. It is also provided that each order shall provide for payment by the handlers on a prorated basis, of the administrative expenses of the authority or agency established under the order; and the authority or agency may sue a handler for his pro-rata share of expenses in the local District Court of the United States. Sec. 15

C. Other provisions in H.R. 8492 are as follows:

ENCOURAGING AGRICULTURAL EXPORTS

- (9) In order to encourage the exportation of major agricultural commodities by the payment of benefits in connection with such exportation, or as indemnity for losses connected therewith; or to encourage domestic consumption by diverting major commodities from the normal channels of trade and commerce (for example, by purchase for relief purposes) - it is provided that an amount equal to 30 percent of the gross receipts from customs duties may be appropriated annually, to be used (1) for this purpose, (2) for the purchase or lease of submarginal lands, and (3) to finance adjustments in the quantity planted or produced for market. Sec. 31
- (10) It is provided that amounts expended under the Agricultural Adjustment Act, for payments and for administrative expenses in connection with any basic commodity, shall not be less than the proceeds of the taxes levied with respect to that commodity, excluding taxes held, or paid for use in, possessions of the United States, and also excluding tax refunds and abatements. Hogs and field corn may be considered as one commodity. Sec. 19

CONTROL OF COMPETING IMPORTS

- (11) Whenever the President has reason to believe that one or more articles are being imported into the United States in such quantities as to render ineffective or materially to interfere with any program or operation under the Agricultural Adjustment Act--

He shall cause an investigation to be made by the United States Tariff Commission.

In accordance with the facts developed by the investigation, he shall control these imports (1) by suitable terms and conditions, (2) by limitations of quantity, or (3) by special compensating taxes. He may suspend, revoke, or modify any such order or provision in accordance with changed circumstances.
Sec. 30

(12) Parity price and miscellaneous provisions:

The parity price base for all commodities for which the base period is 1909-1914 is broadened by providing that it shall reflect current mortgage interest and tax rate per acre on farm real estate. Sec. 1 a and Sec. 13

(13) Miscellaneous provisions include:

The powers vested in the President and the Secretary of Agriculture with respect to sugar beets and sugarcane are extended to December 31, 1937, and refunds of the floor stocks tax on sugar beets and sugarcane are provided for.
Sec. 20

The special definition covering the processing of peanuts in the Act is stricken out. Sec. 14

Use of certain funds is authorized for experimentation and efforts to eradicate Bang's disease in cattle.
Sec. 32

Several sections make changes in numbering and technical changes in language. Sec. 7, Sec. 8a, Sec. 9, Sec. 11(b), Sec. 16, Sec. 18, Sec. 23, Sec. 24.

A saving clause provides that nothing contained in the amendments shall invalidate any marketing agreement or license in existence on the date of the passage of the amendments, or prevent the pursuit of any remedy provided for the enforcement of such agreements or licenses. Sec. 33

Principal Changes Made by Senate Committee in Amendments to

Agricultural Adjustment Act (H.R. 8492)

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This summary of the changes made by the Senate Committee on Agriculture and Forestry in H. R. 8492, following its passage by the House of Representatives, is supplemental to the summary prepared by the AAA of the Bill as passed by the House. Changes made by the Senate, since the Bill was reported out by the Committee, are not included.

House Bill as introduced in Senate

Senate Committee Change

Sec. 2 (1) (b) and (4) (b). One of the conditions for exercising powers under the AA act was "that the exercise of any one or more of such powers would be administratively practicable."

This phrase stricken out.

Sec. 2 (1) (b) and (4) (b). Powers were to be exercised on a finding (after investigation) that facts justified them.

It is made necessary for the Secretary to issue a proclamation as to a finding of facts before exercising powers.

Sec. 2(2)(b). Permitting benefit payments in kind. (basic agricultural commodities)

"Subject to the consent of the producer.

Sec. 2(4)(b). Secretary directed not to EXERCISE POWERS ON FINDING THAT FACTS DO not justify them.

But he may exercise them to carry out obligations already assumed.

Sec. 5 (Sec. 8c (2) of Act) Commodities and their products to which orders are applicable listed as "milk, fruits, (including pecans and walnuts but not including apples and not including fruits for canning) tobacco, vegetables (not including vegetables for canning), and naval stores (not including products of naval stores).

Added to this list: Wool and mohair, fruits for canning (but not vegetables for canning), hops, package bees, queen bees, poultry, and refined and partly refined oleoresin (among naval stores). Soy beans are included specifically. (They were included among vegetables in the House bill). Note: Wool and mohair, while included among commodities subject to orders, are later omitted from all but a few provisions.

Sec. 5 - (Sec. 8c (5)(B) of Act). Milk orders may provide that new producers be paid price specified in order.

Milk order may provide that new producers be paid price for lowest use classification.

Sec. 5 (Sec. 8c (5) (E) of Act) Provides for verification weights, sampling, testing, security for payments in milk orders.

Adds market information, and provision for making deductions from payments to producers for these services (except those who get such service from their cooperative association).

Sec. 5 (Sec. 8c (6) (F) of Act) Provides order may fix minimum prices to be paid by first handlers for commodities other than milk.

The term first handlers is changed to handlers.

Sec. 5 Power to fix minimum selling prices for first handlers was stricken out as the bill passed the House.

Sec. 5 (6)(G) (Sec. 8c(6)(G) of Act) Power to fix minimum selling prices for first handlers is again included.

Sec. 5 As bill passed the House, it eliminated as a term common to all orders that commodities (except fluid milk and cream) shall be sold only at prices filed by handlers in manner provided in the order.

This provision is again included as Sec. 8c (7) (B)

Sec. 5
(Sec.8c(7)(B) of Act.) Directs that orders shall provide for the selection by the Secretary of an Administrative agency, and defining the powers of the agency as, "among other things."

Wording changed to "appointment or selection."
"Among other things" stricken out. Power of the agency limited only to those specified.

Sec. 5 (Sec.8c(8) of Act) Provides for consent of handlers of not less than 50% by volume of a commodity or product affected by an order.

Adds the limitation - 50% of the volume "produced or marketed within the production or marketing area defined in such order," A similar area limitation in obtaining the consent of producers is added under subsections (9) and (9)(A) and 9(b)(i) of Sec.8c of Act; and it is provided in Subsection (9)(B)(i) that producers favoring an order without a marketing agreement may include not only those who have produced "for market" but those who have produced "for sale or consumption." (These changes also made under Subsection (16) (B) providing for termination of orders and marketing agreements.)

Sec. 5 (Sec. 8c(14) of Act) Grants immunity to violators of orders for violations committed between date of petition for modification or exemption, and 5 days after Secretary rules thereon.

Immunity granted only if court finds petition in good faith and not for delay and then only for violations between time petition is filed and time of notice of Secretary's ruling.

Sec. 5 (Sec.8c(17) of Act) Directs that provisions applicable to orders shall also be applicable to amendments to orders.

Adds that three days' notice of a hearing on amendments shall be considered due notice.

Sec. 12(b)(2) (Sec.9(b)(2) of Act.) Provides that tax rates on certain basic commodities until 12/31/1937 shall be those in effect on 6/1/1935.

Date changed from 6/1/1935 to "the date of the adoption of this amendment."

Sec. 12 Adds in Sec.9(b)(4) of Act a processing tax for rye from 8/1/1935 to 12/1/1937 at the rate of 30 cents per bushel of 56 lbs. Floor stocks taxes not applicable.

Sec. 12 Provides in Sec.9(b)(5) of Act a tax rate for flaxseed and barley (if a tax becomes effective prior to 12/31/1937) at 35 cents per bushel of 56 lbs. for flaxseed, and 25 cents per bushel of 48 lbs. for rye. Floor stocks taxes not applicable.

Sec. 12(Sec. 9(b)(4) of Act)

Provides for flexibility of specified tax rates, to meet conditions. But if flexibility is held unconstitutional or invalid, taxes shall be at rates specified by Congress.

(Sec. 9(b)(6)(A)(B)(C)(D)(E)(F) and (G) of Act.) Provides for flexibility in tax rate but if farm price of a commodity during 2 months before and 10 months after beginning of a marketing year is equal to fair exchange value, or does not exceed it by more than 20%, tax rate shall be reduced to 20% of fair exchange value at beginning of next marketing year: (if farm price exceeds fair exchange value by more than 20%, tax rate shall be reduced to 10% of fair exchange value at beginning of next marketing year.

(Note - this applies to tax rates specified in Sec. 12 (2) (3) (4) (5) - that is, wheat, cotton, field corn, hogs, peanuts, tobacco, paper, jute until 12/31/1937; rice to 7/31/1936; rye to 12/1/1937; flaxseed and barley to 12/31/1937)

Sec. 15 is added providing (in Sec. 9 (9) of Act) for processing tax on any material which results in production of rayon or other synthetic yarn, at 125% of rate of processing tax on cotton.

Sec. 17 Authorizing Secretary to confer and to cooperate with State authorities.

Sec. 18 Language changed to direct Secretary to confer with State authorities on their request; and to authorize him to cooperate with them.

Sec. 19 Flax, included as a basic commodity in the original Act, is changed to flaxseed.

Sec. 19. Providing that amounts expended in connection with any basic commodity shall not be less than proceeds of taxes for that commodity.

Stricken out.

Sec. 23 Authorizing Secretary to exempt 110 lbs. of lint cotton from taxes, for use in household of producer.

Sec. 25 Providing that disadvantage to producers, as well as processors, shall be considered in determining whether a compensating tax shall be levied on a competing commodity.

Sec. 29(b) Provides that no refund, etc of floor stocks tax shall be made unless claim is filed within 60 days after right to refund accrued; and no claim for less than \$10 shall be allowed.

Sec. 31(c) Provides that a return may be required to be filed and tax paid in local tax collection district; and returns on verified statements may be required to be filed and records kept to show who is responsible for tax.

Sec. 29 (Sec. 21(a) of Act) prohibits suits for recovery of taxes paid prior to adoption of amendment (in case of unconstitutionality) (d) Denying refunds after adoption of amendment, to those who have not themselves paid the tax.

Sec. 32 Senate bill also removes jurisdiction of courts for such suits. (d) Senate bill provides that this shall also apply in case prohibition of suits for recovery is held invalid.

Sec. 29 (Sec. 21 (f) of Act) makes Sec. 3226 Revised Statutes applicable to suits for recovery of taxes after adoption of amendment.

Sec. 32 provides that this shall also apply in case prohibition of suits for recovery is held invalid.

Sec. 29 (Sec. 21 (g) of Act) permits applicant for a tax refund to state under oath that he has no knowledge tax has not been paid.

Stricken out.

Sec. 30. Authorizing control of competing agricultural imports through taxation or direct limitation.

Stricken out.

Sec. 31. Authorizing appropriation of 30% of customs receipts to encourage exports and domestic consumption, and for other purposes.

Stricken out.

Sec. 33-36. Technical amendments dealing with cotton option contracts.

Sec. 33. Authorizes Secretary to sell cotton at discretion instead of requiring him to sell all cotton by 3/1/1936; states power of Secretary to enter into option contracts, and validates transfers made prior to 1/18/1934.

Sec. 34. Repeals Sec. 6 of Agr. Adj. Act as this is covered by Sec. 7.

Sec. 35. Extends period during which \$100,000,000 is available in connection with cotton options to the date when cotton now held in the pool is finally marketed.

Sec. 36. Authorizes use of funds from sale of cotton to meet administrative and other expenses of handling.

Sec. 39. Defines cotton cooperatives eligible for Government loans.

Sec. 40-41 Amendments to Bankhead Cotton Act.

Sec. 40 Extends operation of Bankhead Act through 1937-38. Provides that favorable vote of 2/3 of producers actually voting shall be sufficient basis for continuance of the Act; ratifies action of Secretary in setting 10,500,000 bales as national allotment for 1935-36.

Sec. 41 Authorizes appropriation for administrative expenses of 25 cents a bale for payment of additional ginning expenses.

Sec. 42-53 Amendments to Kerr-Smith Tobacco Act.

Sec. 42-44. Amending title to make clear Act is intended to raise revenue.

Sec. 45 Extends operation to 4/30/1939; validates operations in 1935-36, revises referendum provision.

Sec. 46 Authorizes tax exemption warrants for persons who cannot sign contracts for religious reasons.

Sec. 47 Redraft of Sec. 5(b) of the Act to cover constitutionality.

Sec. 48 Authorizes voiding of a warrant for non-compliance with agreement.

Sec. 49 Provides for returns and information to the Commissioner of Internal Revenue and prescribes penalty for wilfully failing to make return.

Sec. 50 Authorizes agents of Secretary of Agriculture to administer oaths in connection with execution of forms.

Sec. 51 Makes revenue collected under the Act available for adjustment programs under AAA.

Sec. 52 Extends period for filing claims for tax refunds to 1 year instead of 6 months.

Sec. 53 Provides a 30-day leeway for filing tardy contracts by producers.